AMENDED IN SENATE APRIL 13, 2011

AMENDED IN SENATE MARCH 22, 2011

# SENATE BILL No. 771

**Introduced by Senator Kehoe**
**(Coauthors: Senators Blakeslee, Correa, and Harman)**

February 18, 2011

An act to amend ~~Sections 25744 and~~ *Section* 26003 of the Public Resources Code, ~~and to amend Section 399.20 of the Public Utilities Code, relating to energy, and making an appropriation therefor.~~ *relating to energy.*

LEGISLATIVE COUNSEL'S DIGEST

SB 771, as amended, Kehoe. ~~Renewable energy resources.~~ *California Alternative Energy and Advanced Transportation Financing Authority.*

~~(1) Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations, as defined. Existing law requires the PUC to require the state's 3 largest electrical corporations, Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison, to identify a separate electrical rate component to fund programs that enhance system reliability and provide in-state benefits. This rate component is a nonbypassable element of local distribution and collected on the basis of usage. Existing PUC resolutions refer to the nonbypassable rate component as a "public goods charge." The public goods charge moneys are collected to support cost-effective energy efficiency and conservation activities, public interest research and development not adequately provided by competitive and regulated markets, and renewable energy resources. Existing law establishes the Renewable Resource Trust Fund as a fund that is continuously~~

~~appropriated, with certain exceptions for administrative expenses, in the State Treasury, and requires that certain moneys collected to support renewable energy resources through the public goods charge are deposited into the fund and authorizes the Energy Commission to expend the moneys pursuant to the Renewable Energy Resources Program. Existing law requires that 79% of the moneys collected pursuant to the renewable energy public goods charge that are deposited into the fund be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications. These moneys are deposited into the Emerging Renewable Resources Account within the Renewable Resource Trust Fund.~~

~~This bill would include as eligible electricity generating systems that may receive incentives pursuant to the Emerging Renewable Resources Account, continuous clean renewable energy resources, as defined, that utilize waste gases from landfills, digesters, or wastewater treatment facilities to generate electricity. By expanding the uses to which moneys that are in a continuously appropriated account may be used, the bill would make an appropriation.~~

~~Existing law limits the eligible electricity generating systems that may receive incentives pursuant to the Emerging Renewable Resources Account to those systems that are intended primarily to offset part or all of the consumer's own electricity demand.~~

~~This bill would establish an exception to this requirement for fuel cells and continuous clean renewable energy resources that utilize waste gases from landfills, digesters, or wastewater treatment facilities to generate electricity. The bill would instead provide that generation that involves the onsite or dedicated capture, treatment, and conversion of waste gas to generate electricity utilizing fuel cells or a continuous clean renewable energy resource may be sized to capture the energy potential of the source of waste gas and need not be sized to offset part or all of the customer's load. For these purposes, a dedicated use of waste gas occurs when the waste gas is transported from the site where the gas is captured to the generation site using a dedicated pipeline that is not used to transport natural gas.~~

~~(2) Existing law requires every electrical corporation to file a standard tariff with the commission for electricity generated by an electric generation facility, as defined, that qualifies for the tariff, is owned and operated by a retail customer of the electrical corporation, and is located within the service territory of, and developed to sell electricity to, the~~

~~electrical corporation. Existing law requires that, in order to qualify for the tariff, the electric generation facility: (A) have an effective capacity of not more than 3 megawatts, subject to the authority of the commission to reduce this megawatt limitation, (B) be interconnected and operate in parallel with the electric transmission and distribution grid, (C) be strategically located and interconnected to the electric transmission system in a manner that optimizes the deliverability of electricity generated at the facility to load centers, and (D) meet the definition of an eligible renewable energy resource under the California renewables portfolio standard program.~~

~~This bill would state that an eligible renewable energy resource includes a continuous clean renewable energy resource that utilizes waste gases from landfills, digesters, or wastewater treatment facilities to generate electricity.~~

~~(3) Existing~~

*Existing* law requires the California Alternative Energy and Advanced Transportation Financing Authority to establish a renewable energy program to provide financial assistance to public power entities, independent generators, utilities, or businesses manufacturing components or systems to generate new and renewable energy sources, develop clean and efficient distributed generation, and demonstrate the economic feasibility of new technologies. Existing law defines "renewable energy" to include specified energy generation technologies.

This bill would expand the definition of "renewable energy" to include energy generation based on landfill gas turbines, digester gas turbines, and microturbines.

Vote: ~~⅔~~ *majority*. Appropriation: ~~yes~~ *no*. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

~~SECTION 1. Section 25744 of the Public Resources Code is amended to read:~~

~~25744. (a) Seventy-nine percent of the money collected pursuant to the renewable energy public goods charge shall be used for a multiyear, consumer-based program to foster the development of emerging renewable technologies in distributed generation applications.~~

~~(b) Any funds used for emerging technologies pursuant to this section shall be expended in accordance with this chapter, subject to all of the following requirements:~~

~~(1) Funding for emerging technologies shall be provided through a competitive, market-based process that is in place for a period of not less than five years, and is structured to allow eligible emerging technology manufacturers and suppliers to anticipate and plan for increased sale and installation volumes over the life of the program.~~

~~(2) The program shall provide monetary rebates, buydowns, or equivalent incentives, subject to paragraph (3), to purchasers, lessees, lessors, or sellers of eligible electricity generating systems. Incentives shall benefit the end-use consumer of renewable generation by directly and exclusively reducing the purchase or lease cost of the eligible system, or the cost of electricity produced by the eligible system. Incentives shall be issued on the basis of the rated electrical generating capacity of the system measured in watts, or the amount of electricity production of the system, measured in kilowatthours. Incentives shall be limited to a maximum percentage of the system price, as determined by the commission. The commission may establish different incentive levels for systems based on technology type and system size, and may provide different incentive levels for systems used in conjunction with energy-efficiency measures.~~

~~(3) (A) Except for generation that involves the onsite or dedicated capture, treatment, and clean conversion of waste gas to electricity as described in subparagraph (C), eligible electricity generating systems are intended primarily to offset part or all of the consumer's own electricity demand, including systems that are used as backup power for emergency, safety, or telecommunications, and shall not be owned by local publicly owned electric utilities, nor be located at a customer site that is not receiving distribution service from an electrical corporation that is subject to the renewable energy public goods charge and contributing funds to support programs under this chapter. Eligible distributed emerging technologies shall have a rated generation capacity of not more than 350 kilowatts and include all of the following:~~

~~(i) Wind turbines.~~

~~(ii) Fuel cell technologies that use renewable fuels and that have an emissions profile equivalent or better than the waste gas emission standards adopted by the State Air Resources Board that take effect on January 1, 2013 (subdivisions (c) and (d) of Section 94203 of the California Code of Regulations).~~

~~(iii) Continuous clean renewable energy resources that utilize waste gases from landfills, digesters, or wastewater treatment facilities to generate electricity. For these purposes, a generating system is continuous if it is capable of producing electricity for 8,000 hours a year. For these purposes, a generating system is clean if it has an emissions profile equivalent or better than the waste gas emission standards adopted by the State Air Resources Board that take effect on January 1, 2013 (subdivisions (c) and (d) of Section 94203 of the California Code of Regulations).~~

~~(iv) Other distributed renewable emerging technologies that meet the emerging technology eligibility criteria established by the commission.~~

~~(B) Technologies that are eligible for rebates, buydowns, or similar incentives from any other commission or Public Utilities Commission program shall not be eligible for funding under this section.~~

~~(C) Generation that involves the onsite or dedicated capture, treatment, and conversion of waste gas to generate electricity utilizing fuel cells or a continuous clean renewable energy resource may be sized to capture the energy potential of the source of waste gas and need not be sized to offset part or all of the customer's load. For these purposes, a dedicated use of waste gas occurs when the waste gas is transported from the site where the gas is captured to the generation site using a dedicated pipeline that is not used to transport natural gas.~~

~~(D) All eligible electricity generating system components shall be new and unused, shall not have been previously placed in service in any other location or for any other application, and shall have a warranty of not less than five years to protect against defects and undue degradation of electrical generation output.~~

~~(E) Except for generation that involves the onsite or dedicated capture, treatment, and clean conversion of waste gas to electricity as described in subparagraph (C), eligible electricity generating systems and their fuel resources shall be located on the same premises of the end-use consumer where the consumer's own~~

~~electricity demand is located, and all eligible electricity generating systems shall be connected to the utility grid, unless the system purpose is for backup generation used in emergency, safety, or telecommunications in California.~~

~~(F) The commission may require eligible electricity generating systems to have meters in place to monitor and measure a system's performance and generation. Only systems that will be operated in compliance with applicable law and the rules of the Public Utilities Commission shall be eligible for funding.~~

~~(4) The commission shall limit the amount of funds available for a system or project of multiple systems and reduce the level of funding for a system or project of multiple systems that has received, or may be eligible to receive, any government or utility funds, incentives, or credit.~~

~~(5) In awarding funding, the commission may provide preference to systems that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.~~

~~(6) In awarding funding, the commission shall develop and implement eligibility criteria and a system that provides preference to systems based upon system performance.~~

~~(7) At least once annually, the commission shall publish and make available to the public the balance of funds available for emerging renewable energy resources for rebates, buydowns, and other incentives for the purchase of these resources.~~

~~(c) Notwithstanding Section 27540.5, the commission may expend, until December 31, 2008, up to sixty million dollars ($60,000,000) of the funding allocated to the Renewable Resources Trust Fund for the program established in this section, subject to the repayment requirements of subdivision (f) of Section 25751.~~

~~(d) Any funds for photovoltaic or solar thermal electric technologies shall be awarded in compliance with Chapter 8.8 (commencing with Section 25780), and not with this section.~~

~~SEC. 2.~~

*SECTION 1.* Section 26003 of the Public Resources Code is amended to read:

26003. As used in this division, unless the context otherwise requires:

(a) "Authority" means the California Alternative Energy and Advanced Transportation Financing Authority established pursuant

to Section 26004, and any board, commission, department, or officer succeeding to the functions of the authority, or to which the powers conferred upon the authority by this division shall be given.

(b) "Cost" as applied to a project or portion of the project financed under this division means all or part of the cost of construction and acquisition of all lands, structures, real or personal property or an interest in the real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which those buildings or structures may be moved; the cost of all machinery, equipment, and furnishings, financing charges, interest prior to, during, and for a period after, completion of construction as determined by the authority; the cost of the purchase or sale of energy derived from an alternative source pursuant to subdivision (g) of Section 26011; provisions for working capital; reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations, and improvements; the cost of architectural, engineering, financial, accounting, auditing and legal services, plans, specifications, estimates, administrative expenses, and other expenses necessary or incident to determining the feasibility of constructing any project or incident to the construction, acquisition, or financing of a project.

(c) (1) "Alternative sources" means the application of cogeneration technology, as defined in Section 25134; the conservation of energy; or the use of solar, biomass, wind, geothermal, hydroelectricity under 30 megawatts, or any other source of energy, the efficient use of which will reduce the use of fossil and nuclear fuels.

(2) "Alternative sources" does not include a hydroelectric facility that does not meet state laws pertaining to the control, appropriation, use, and distribution of water, including, but not limited to, the obtaining of applicable licenses and permits.

(d) "Advanced transportation technologies" means emerging commercially competitive transportation-related technologies identified by the authority as capable of creating long-term, high value-added jobs for Californians while enhancing the state's commitment to energy conservation, pollution reduction, and

transportation efficiency. Those technologies may include, but are not limited to, any of the following:

(1) Intelligent vehicle highway systems.

(2) Advanced telecommunications for transportation.

(3) Command, control, and communications for public transit vehicles and systems.

(4) Electric vehicles and ultralow-emission vehicles.

(5) High-speed rail and magnetic levitation passenger systems.

(6) Fuel cells.

(e) "Financial assistance" includes, but is not limited to, either, or any combination, of the following:

(1) Loans, loan loss reserves, interest rate reductions, proceeds of bonds issued by the authority, insurance, guarantees or other credit enhancements or liquidity facilities, contributions of money, property, labor, or other items of value, or any combination thereof, as determined by, and approved by the resolution of, the board.

(2) Any other type of assistance the authority determines is appropriate.

(f) "Participating party" means either of the following:

(1) A person or an entity or group of entities engaged in business or operations in the state, whether organized for profit or not for profit, that does either of the following:

(A) Applies for financial assistance from the authority for the purpose of implementing a project in a manner prescribed by the authority.

(B) Participates in the purchase or sale of energy derived from an alternative source pursuant to subdivision (g) of Section 26011.

(2) A public agency or nonprofit corporation that does either of the following:

(A) Applies for financial assistance from the authority for the purpose of implementing a project in a manner prescribed by the authority.

(B) Participates in the purchase or sale of energy derived from an alternative source pursuant to subdivision (g) of Section 26011.

(g) (1) "Project" means a land, building, improvement to the land or building, rehabilitation, work, property, or structure, real or personal, stationary or mobile, including, but not limited to, machinery and equipment, whether or not in existence or under construction, that utilizes, or is designed to utilize, an alternative source, or that is utilized for the design, technology transfer,

manufacture, production, assembly, distribution, or service of advanced transportation technologies, or an arrangement for the purchase, including prepayment, or sale of energy derived from an alternative source pursuant to subdivision (g) of Section 26011.

(2) "Project," for the purposes of Section 26011.8, means any tangible personal property that is utilized for the design, manufacture, production, or assembly of advanced transportation technologies or alternative source products, components, or systems.

(h) "Public agency" means a federal or state agency, department, board, authority, state or community college, university, or commission, or a county, city and county, city, regional agency, public district, school district, or other political entity.

(i) (1) "Renewable energy" means a device or technology that conserves or produces heat, processes heat, space heating, water heating, steam, space cooling, refrigeration, mechanical energy, electricity, or energy in any form convertible to these uses, that does not expend or use conventional energy fuels, and that uses any of the following electrical generation technologies:

(A) Biomass.

(B) Solar thermal.

(C) Photovoltaic.

(D) Wind.

(E) Geothermal.

(2) For purposes of this subdivision, "conventional energy fuel" means any fuel derived from petroleum deposits, including, but not limited to, oil, heating oil, gasoline, fuel oil, or natural gas, including liquefied natural gas, or nuclear fissionable materials.

(3) Notwithstanding paragraph (1), for purposes of this section, "renewable energy" also means ultralow-emission equipment for energy generation based on thermal energy systems such as natural gas turbines, landfill gas turbines, digester gas turbines, microturbines, and fuel cells.

(j) "Revenue" means all rents, receipts, purchase payments, loan repayments, and all other income or receipts derived by the authority from a project, or the sale, lease, or other disposition of alternative source or advanced transportation technology facilities, or the making of loans to finance alternative source or advanced transportation technology facilities, and any income or revenue

derived from the investment of money in any fund or account of the authority.

~~SEC. 3. Section 399.20 of the Public Utilities Code is amended to read:~~

~~399.20. (a) It is the policy of this state and the intent of the Legislature to encourage electrical generation from eligible renewable energy resources.~~

~~(b) As used in this section, "electric generation facility" means an electric generation facility located within the service territory of, and developed to sell electricity to, an electrical corporation that meets all of the following criteria:~~

~~(1) Has an effective capacity of not more than three megawatts.~~

~~(2) Is interconnected and operates in parallel with the electrical transmission and distribution grid.~~

~~(3) Is strategically located and interconnected to the electrical transmission and distribution grid in a manner that optimizes the deliverability of electricity generated at the facility to load centers.~~

~~(4) Is an eligible renewable energy resource. An eligible renewable energy resource includes a continuous clean renewable energy resource that use waste gases from landfills, digesters, or wastewater treatment facilities to generate electricity. For these purposes, a generating system is continuous if it is capable of producing electricity for 8,000 hours a year. For these purposes, a generating system is clean if it has an emissions profile equivalent or better than the waste gas emission standards adopted by the State Air Resources Board that take effect on January 1, 2013 (subdivisions (c) and (d) of Section 94203 of the California Code of Regulations).~~

~~(c) Every electrical corporation shall file with the commission a standard tariff for electricity purchased from an electric generation facility. The commission may modify or adjust the requirements of this section for any electrical corporation with less than 100,000 service connections, as individual circumstances merit.~~

~~(d) (1) The tariff shall provide for payment for every kilowatthour of electricity purchased from an electric generation facility for a period of 10, 15, or 20 years, as authorized by the commission. The payment shall be the market price determined by the commission pursuant to Section 399.15 and shall include all current and anticipated environmental compliance costs,~~

~~including, but not limited to, mitigation of emissions of greenhouse gases and air pollution offsets associated with the operation of new generating facilities in the local air pollution control or air quality management district where the electric generation facility is located.~~

~~(2) The commission may adjust the payment rate to reflect the value of every kilowatthour of electricity generated on a time-of-delivery basis.~~

~~(3) The commission shall ensure, with respect to rates and charges, that ratepayers that do not receive service pursuant to the tariff are indifferent to whether a ratepayer with an electric generation facility receives service pursuant to the tariff.~~

~~(e) An electrical corporation shall provide expedited interconnection procedures to an electric generation facility located on a distribution circuit that generates electricity at a time and in a manner so as to offset the peak demand on the distribution circuit, if the electrical corporation determines that the electric generation facility will not adversely affect the distribution grid. The commission shall consider and may establish a value for an electric generation facility located on a distribution circuit that generates electricity at a time and in a manner so as to offset the peak demand on the distribution circuit.~~

~~(f) An electrical corporation shall make the tariff available to the owner or operator of an electric generation facility within the service territory of the electrical corporation, upon request, on a first-come-first-served basis, until the electrical corporation meets its proportionate share of a statewide cap of 750 megawatts cumulative rated generation capacity served under this section and Section 387.6. The proportionate share shall be calculated based on the ratio of the electrical corporation's peak demand compared to the total statewide peak demand.~~

~~(g) The electrical corporation may make the terms of the tariff available to owners and operators of an electric generation facility in the form of a standard contract subject to commission approval.~~

~~(h) Every kilowatthour of electricity purchased from an electric generation facility shall count toward meeting the electrical corporation's renewables portfolio standard annual procurement targets for purposes of paragraph (1) of subdivision (b) of Section 399.15.~~

~~(i) The physical generating capacity of an electric generation facility shall count toward the electrical corporation's resource adequacy requirement for purposes of Section 380.~~

~~(j) (1) The commission shall establish performance standards for any electric generation facility that has a capacity greater than one megawatt to ensure that those facilities are constructed, operated, and maintained to generate the expected annual net production of electricity and do not impact system reliability.~~

~~(2) The commission may reduce the three megawatt capacity limitation of paragraph (1) of subdivision (b) if the commission finds that a reduced capacity limitation is necessary to maintain system reliability within that electrical corporation's service territory.~~

~~(k) (1) Any owner or operator of an electric generation facility that received ratepayer-funded incentives in accordance with Section 379.6 of this code, or with Section 25782 of the Public Resources Code, and participated in a net metering program pursuant to Sections 2827, 2827.9, and 2827.10 of this code prior to January 1, 2010, shall be eligible for a tariff or standard contract filed by an electrical corporation pursuant to this section.~~

~~(2) In establishing the tariffs or standard contracts pursuant to this section, the commission shall consider ratepayer-funded incentive payments previously received by the generation facility pursuant to Section 379.6 of this code or Section 25782 of the Public Resources Code. The commission shall require reimbursement of any funds received from these incentive programs to an electric generation facility, in order for that facility to be eligible for a tariff or standard contract filed by an electrical corporation pursuant to this section, unless the commission determines ratepayers have received sufficient value from the incentives provided to the facility based on how long the project has been in operation and the amount of renewable electricity previously generated by the facility.~~

~~(3) A customer that receives service under a tariff or contract approved by the commission pursuant to this section is not eligible to participate in any net metering program.~~

~~(*l*) An owner or operator of an electric generation facility electing to receive service under a tariff or contract approved by the commission shall continue to receive service under the tariff or contract until either of the following occurs:~~

~~(1) The owner or operator of an electric generation facility no longer meets the eligibility requirements for receiving service pursuant to the tariff or contract.~~

~~(2) The period of service established by the commission pursuant to subdivision (d) is completed.~~

~~(m) Within 10 days of receipt of a request for a tariff pursuant to this section from an owner or operator of an electric generation facility, the electrical corporation that receives the request shall post a copy of the request on its Internet Web site. The information posted on the Internet Web site shall include the name of the city in which the facility is located, but information that is proprietary and confidential, including, but not limited to, address information beyond the name of the city in which the facility is located, shall be redacted.~~

~~(n) An electrical corporation may deny a tariff request pursuant to this section if the electrical corporation makes any of the following findings:~~

~~(1) The electric generation facility does not meet the requirements of this section.~~

~~(2) The transmission or distribution grid that would serve as the point of interconnection is inadequate.~~

~~(3) The electric generation facility does not meet all applicable state and local laws and building standards, and utility interconnection requirements.~~

~~(4) The aggregate of all electric generating facilities on a distribution circuit would adversely impact utility operation and load restoration efforts of the distribution system.~~

~~(o) Upon receiving a notice of denial from an electrical corporation, the owner or operator of the electric generation facility denied a tariff pursuant to this section shall have the right to appeal that decision to the commission.~~

~~(p) In order to ensure the safety and reliability of electric generation facilities, the owner of an electric generation facility receiving a tariff pursuant to this section shall provide an inspection and maintenance report to the electrical corporation at least once every other year. The inspection and maintenance report shall be prepared at the owner's or operator's expense by a California licensed contractor who is not the owner or operator of the electric generation facility. A California licensed electrician shall perform the inspection of the electrical portion of the generation facility.~~

~~(q) The contract between the electric generation facility receiving the tariff and the electrical corporation shall contain provisions that ensure that construction of the electric generating facility complies with all applicable state and local laws and building standards, and utility interconnection requirements.~~

~~(r) (1) All construction and installation of facilities of the electrical corporation, including at the point of the output meter or at the transmission or distribution grid, shall be performed only by that electrical corporation.~~

~~(2) All interconnection facilities installed on the electrical corporation's side of the transfer point for electricity between the electrical corporation and the electrical conductors of the electric generation facility shall be owned, operated, and maintained only by the electrical corporation. The ownership, installation, operation, reading, and testing of revenue metering equipment for electric generating facilities shall only be performed by the electrical corporation.~~

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